

SHOOK, HARDY & BACON LLP  
 B. Trent Webb, Esq. (*pro hac vice*)  
 Eric Buresh, Esq. (*pro hac vice*)  
 2555 Grand Boulevard  
 Kansas City, Missouri 64108-2613  
 Telephone: (816) 474-6550  
 Facsimile: (816) 421-5547  
[bwebb@shb.com](mailto:bwebb@shb.com)  
[eburesh@shb.com](mailto:eburesh@shb.com)

Robert H. Reckers, Esq. (*pro hac vice*)  
 600 Travis Street, Suite 1600  
 Houston, Texas 77002  
 Telephone: (713) 227-8008  
 Facsimile: (731) 227-9508  
[rreckers@shb.com](mailto:rreckers@shb.com)

GREENBERG TRAURIG  
 Mark G. Tratos, Esq. (Nevada Bar No. 1086)  
 Brandon Roos, Esq. (Nevada Bar No. 7888)  
 Leslie Godfrey, Esq. (Nevada Bar No. 10229)  
 3773 Howard Hughes Parkway  
 Suite 400 North  
 Las Vegas, NV 89169  
 Telephone: (702) 792-3773  
 Facsimile: (702) 792-9002  
[tratosm@gtlaw.com](mailto:tratosm@gtlaw.com)  
[roosb@gtlaw.com](mailto:roosb@gtlaw.com)  
[godfreyl@gtlaw.com](mailto:godfreyl@gtlaw.com)

WILSON SONSINI GOODRICH & ROSATI  
 Jonathan M. Jacobson, Esq.  
 1301 Avenue of the Americas, 40<sup>th</sup> Floor  
 New York, New York, 110019  
 Telephone: (212) 999-5800  
 Facsimile: (212) 999-5899  
[jjacobson@wsgr.com](mailto:jjacobson@wsgr.com)  
 (*pro hac vice applications to be submitted*)

Michael B. Levin, Esq.  
 650 Page Mill Road  
 Palo Alto, CA 94304-1050  
 Telephone: (650) 493- 9300  
 Facsimile: (650) 493 - 6811  
[mlevin@wsgr.com](mailto:mlevin@wsgr.com)  
 (*pro hac vice application to be submitted*)

*Attorneys for Defendants*  
 RIMINI STREET, INC. and SETH RAVIN

UNITED STATES DISTRICT COURT  
 DISTRICT OF NEVADA

ORACLE USA, INC., a Colorado corporation;  
 ORACLE AMERICA, INC., a Delaware  
 corporation; and ORACLE INTERNATIONAL  
 CORPORATION, a California corporation,

Plaintiffs,

v.

RIMINI STREET, INC., a Nevada corporation;  
 SETH RAVIN, an individual,

Defendants.

Case No. 2:10-cv-0106-LRH-PAL

**DEFENDANT RIMINI STREET'S  
 OPPOSITION TO ORACLE'S  
 MOTION TO DISMISS  
 COUNTERCLAIMS AND TO  
 STRIKE AFFIRMATIVE DEFENSE**

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**DEFENDANT RIMINI STREET'S OPPOSITION TO ORACLE'S MOTION TO DISMISS**

Defendant Rimini Street Inc. ("Rimini Street") files its Opposition to Plaintiffs Oracle USA, Inc., Oracle America, Inc., and Oracle International Corporation (together "Oracle" or "Plaintiffs") Motion to Dismiss Counterclaims and to Strike Affirmative Defense. *See* Doc No. 50.

**I. INTRODUCTION**

Through its counterclaims, Rimini Street seeks to bring to an end to Oracle's illegal efforts to forestall legal competition and damage Rimini Street's business through false statements and disparagement. These counterclaims are not "merely a repackaging of the defenses that Rimini intends to offer," as Oracle alleges. Doc. No. 50 at 7. Rather, Rimini Street's counterclaims stand on their own merits and establish claims for relief independent of Oracle's allegations.

First, with respect to Rimini's claim for defamation and trade libel, Oracle's primary criticism is that Rimini Street's pleadings do not provide fair notice as to the substance of the allegedly defamatory statements. To address this concern, Rimini Street has filed concurrently herewith an amended counterclaim that provides specific details regarding a number of defamatory statements made by Oracle. *See* Exhibit A (Rimini Street's Answer to First Amended Complaint and First Amended Counterclaim). This amended counterclaim first identifies a statement made by an Oracle spokesperson, Deborah Hellinger, to the press accusing Rimini Street and its CEO, Mr. Seth Ravin, of engaging in "massive theft" of Oracle's intellectual property. Second, Rimini Street's amended counterclaim details comments made by Oracle to a senior analyst, Pat Phelan, of an influential equity analyst firm, Gartner Research. These statements alleged that the practices employed by Rimini Street to provide maintenance and support for Oracle-branded software are illegal. Third, Rimini Street details statements made in the Spring of 2010 by Oracle's Senior Vice President, Juan C. Jones, to a prospective Rimini Street client, National Grid. Mr. Jones stated that Rimini Street's business model was presently unsustainable and that Rimini Street would not be in business in two years. Finally, Rimini Street identifies similar allegations of unsustainability that were made by Oracle executives to Wayne Thrush, the Executive Director of a consulting firm and to an Oracle industry partner named CD Group. While discovery will undoubtedly uncover additional defamatory communications by Oracle, the facts set forth in Rimini Street's amended

1 pleadings are more than sufficient to put Oracle on notice of the bases for Rimini Street's defamation  
2 and trade libel claim.

3       Second, with respect to Rimini Street's copyright misuse counterclaim and affirmative  
4 defense, Oracle advances an incorrect and narrow view of the law of misuse. Oracle then  
5 mischaracterizes Rimini Street's factual allegations to fit within this incorrect standard. Applying  
6 the proper standard for copyright misuse, it is clear that Rimini Street has properly set forth such a  
7 claim.

8       Specifically, Oracle attempts to focus the misuse inquiry solely upon whether the relevant  
9 licenses expressly prohibit competition beyond the scope of the copyrights in question. *See* Doc.  
10 No. 50 at 16. But the law of misuse is not so limited, and instead asks whether the copyrights have  
11 been used in a manner violative of public policy. Indeed, courts have found misuse where copyright  
12 holders have attempted to use a combination of unduly restrictive license agreements and  
13 technological measures to prohibit competition in areas beyond the scope provided by copyrights, as  
14 Rimini Street has alleged here. Perhaps sensing this flaw in its arguments, Oracle argues that Rimini  
15 Street cannot possibly show Oracle's licensing practices unduly extend the scope of its copyrights  
16 given Rimini Street's success in the marketplace. Doc. No. 50 at 2, 18. But this argument rings  
17 hollow. Oracle cannot on one hand argue that Rimini Street's success demonstrates the propriety of  
18 Oracle's conduct, while at the same time attributing this very success to "illegal activity." *See* Doc.  
19 No. 36 at 5 ("Oracle brings this lawsuit to end [Rimini Street's business model] once and for all, stop  
20 Rimini Street's illegal activity, and redress the harm that Rimini Street has caused by its illegal  
21 conduct."). Rimini Street has pled facts establishing that Oracle has used its copyrights in a manner  
22 violative of public policy, and, therefore, Oracle's motion to dismiss Rimini Street's misuse claim  
23 and affirmative defense should be denied.

24       Finally, Oracle moves to dismiss Rimini Street's third and final counterclaim for violation of  
25 California's Unfair Competition Law. This claim is supported by the allegations of the two  
26 preceding counterclaims. For the reasons stated above, Rimini has sufficiently pled its claims for  
27 defamation, trade libel, and copyright misuse. Thus, Oracle's motion to dismiss Rimini Street's  
28 unfair competition claim also fails.

## II. LEGAL STANDARD

A motion to dismiss under Federal Rule of Civil Procedure Rule 12(b)(6) tests the legal sufficiency of the claims alleged in the complaint. *Ileto v. Glock, Inc.*, 349 F.3d 1191, 1199-1200 (9th Cir. 2003). The allegations of the complaint need only to provide “fair notice of what . . . the claim is and the grounds upon which it rests.” *Erickson v. Pardus*, 551 U.S. 89, 93 (2007)(citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). The Court takes all allegations of material fact in the complaint as true. *Erickson*, 551 U.S. at 94; *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1950 (2009). So long as the complaint states “enough facts to state a claim for relief that is plausible on its face,” the Court should deny a motion to dismiss. *Twombly*, 550 U.S. at 547.

If a court dismisses a complaint for failure to state a claim, it should grant, “with extreme liberality,” leave to amend “unless it determines that the pleading could not possibly be cured by the allegation of other facts.” *Doe v. United States*, 58 F.3d 494, 497 (9th Cir. 1995); *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051-1052 (9th Cir. 2003)(internal citations omitted).

## III. ARGUMENT

### A. Rimini Street has Stated a Cause of Action for Defamation/Trade Libel.

Oracle’s motion to dismiss Rimini Street’s counterclaim for defamation, business disparagement, and trade libel rests on two grounds. First, Oracle argues that Rimini Street has failed to plead the substance and surrounding details of Oracle’s defamatory statements with adequate specificity. Doc. No. 50 at 6-13. To address these arguments expeditiously, Rimini Street has amended its pleadings to further clarify the basis of its defamation claims. Second, Oracle argues that Rimini Street’s claim is barred to the extent that it relies on statements in Oracle’s complaint. But Rimini Street’s claims are not based on Oracle’s complaint, as Oracle itself concedes and as Rimini Street’s amendments make clear. Therefore, Rimini Street’s pleadings, as amended, are sufficiently pled, and Oracle’s motion to dismiss this counterclaim should be denied.

According to Oracle, “In order to adequately plead the essential element of a published, false statement, Rimini must plead the substance of the allegedly defamatory statement.” Doc. No. 50 at 8. Consistent with this standard, Rimini Street has amended its defamation counterclaim to further clarify the bases for this claim. Rimini Street’s pleadings now identify specific defamatory

1 statements made by Oracle, each of which Oracle knew or should have known was false.

2 First, Oracle spokesperson Deborah Hellinger publically accused Rimini Street and Mr.  
3 Ravin on March 29, 2010 of engaging in “massive theft” of Oracle’s intellectual property. Ex. A at  
4 para. 45. These statements were widely published in the media. *See*, John Letzing, *Upstart fires*  
5 *back at Oracle in legal battle*, MarketWatch, Mar. 29, 2010,  
6 <http://www.marketwatch.com/story/upstart-fires-back-at-oracle-in-legal-battle-2010-03-29> (“In  
7 reference to Rimini Street Chief Executive Seth Ravin, Hellinger added: ‘The massive theft that  
8 Rimini and Mr. Ravin engaged in is not healthy competition.’”); Chris Kanaracus, *Rimini Street*  
9 *files countersuit against Oracle*, Bloomberg Businessweek, Mar. 29, 2010,  
10 <http://www.businessweek.com/idg/2010-03-29/rimini-street-files-countersuit-against-oracle.html>).

11 While Ms. Hellinger’s false statements to the media were addressed to the present judicial  
12 proceedings, the Ninth Circuit has made clear that “the litigation privilege did not extend to  
13 ‘litigating in the press.’” *Rodriguez vs. Panayiotou*, 314 F.3d 979, 988 (9th Cir. 2002) (quoting  
14 *Rothman v. Jackson*, 49 Cal. App. 4th 1134, 57 Cal. Rptr. 2d 284, 294 (Ct. App. 1996)).

15 Second, in approximately March of 2009, an Oracle representative contacted a senior analyst,  
16 Pat Phelan, for an influential equity analyst firm, Gartner Research, and made statements insinuating  
17 that Rimini Street’s business practices were illegal, including its practices employed when providing  
18 maintenance and support for Oracle-branded software. Ex. A at para. 48. While Rimini Street does  
19 not yet know the name of the Oracle representative that contacted Ms. Phelan, this information  
20 should be known to Oracle, and discovery will further illuminate the details of Oracle’s attempt to  
21 tarnish Rimini Street’s standing in the industry by spreading false information to financial analysts.

22 Third, Juan C. Jones, Oracle’s Senior Vice President North America Support Services,  
23 approached a potential Rimini Street customer, National Grid, in the Spring of 2010 and made  
24 defamatory statements regarding Rimini Street, stating that Rimini Street’s business model is  
25 unsustainable and that Rimini Street would not be in business in two years. Ex. A at para. 46. While  
26 provably false, Mr. Jones statements regarding the sustainability of Rimini Street’s business was  
27 presented to National Grid as assertions of actual fact. *See Jett v. Sicroff*, 401 F.3d 1101, 1105 (9th  
28 Cir. 2005) (explaining that defamation may be found when the derogatory “statement is reasonably



1 susceptible of an interpretation which implies a provably false assertion of actual fact.”).

2 Finally, in the Winter of 2010 Oracle executives met with various executives of the CD  
3 Group, a consulting firm and Oracle industry partner. An Executive Director at the CD Group,  
4 Wayne Thrush, was in attendance at this meeting. During the meeting, Oracle executives made  
5 defamatory and false statements regarding Rimini Street. Ex. A at para. 47. These statements were  
6 similar to those made by Mr. Jones to National Grid, and including statements that Oracle possessed  
7 information that, when disclosed, would put Rimini Street out of business.

8 Rimini Street’s pleadings set forth specific examples of Oracle’s defamatory statements.  
9 Rimini Street’s claims are thus more than sufficient to provide Oracle “fair notice of what the . . .  
10 claim is and the grounds on which it rests.” *Twombly*, 550 U.S. at 555 (citation omitted and  
11 alteration in original). Moreover, the specific defamatory statements set forth by Rimini Street’s  
12 pleadings exhibit a pattern by Oracle of making false statements in a campaign to discredit Rimini  
13 Street and dissuade customers from utilizing Rimini Street’s services. Therefore, Oracle’s motion to  
14 dismiss Rimini Street’s defamation and trade libel claim should be denied.

15 **B. Rimini Street has Stated a Claim for Copyright Misuse.**

16 Oracle also moves to dismiss Rimini Street’s copyright misuse counterclaim and affirmative  
17 defense. Doc. No. 50 at 19 – 24. Oracle’s motion mischaracterizes both the law of misuse and  
18 Rimini Street’s factual allegations and, thus, should be denied. Oracle’s misuse arguments are  
19 premised on the incorrect assertion that the “only conduct [constituting misuse] that Rimini alleges .  
20 . . is that Oracle limits access to and use of Oracle’s copyrighted work.” *Id.* at 2. This is incorrect.  
21 As set forth in its pleadings, Rimini Street alleges that Oracle has attempted to use technical  
22 measures and the terms of various license agreements, including the terms of its “browser-wrap” or  
23 “click-wrap” agreements, to “maintain a stranglehold over its customers by effectively requiring  
24 them to either continue purchasing after-market support only from Oracle or forego critical support  
25 materials to which they are entitled and for which they have already paid.” Ex. A at para. 64. By  
26 pleading facts demonstrating that Oracle has used its copyrights to engage in a pattern of activities  
27 aimed at securing a monopoly beyond the bounds of its copyrights, Rimini Street has stated a claim  
28 for copyright misuse.

1                   **1. Rimini Street has Pled Facts Demonstrating a Pattern of Conduct by**  
 2                   **Oracle in Using its Copyrights to Secure a Monopoly on Uncopyrighted**  
 3                   **Support Services.**

4           Oracle argues that Rimini Street's copyright misuse claims fail, as a matter of law, because  
 5           "all Rimini alleges is that Oracle restricts copying and use of its copyrighted works." Doc. No. 50 at  
 6           19. Rimini's Street's pleading, however, is not so limited.<sup>1</sup> Rather, Rimini Street's factual  
 7           allegations establish a pattern of conduct through which Oracle has attempted to use its copyrights to  
 8           prevent third parties from offering maintenance and support services, "thereby securing for [Oracle]  
 9           a limited monopoly" with respect to such uncopyrighted after-market support services. *Alcatel USA,*  
 10           *Inc. v. DGI Technologies, Inc.*, 166 F. 3d 772, 794 (5th Cir. 1999)

11           When licensing its software, Oracle will typically offer, for an annual fee, support and  
 12           maintenance services. "Oracle president Safra Catz has repeatedly noted [the] importance [of these  
 13           annual fees], even telling analysts that customers have no choice but to pay them." Barbara Darrow,  
 14           *Oracle Fees for Maintenance and Support Under Fire*, IT Channel News, March 13, 2009,  
 15           [http://searchitchannel.techtarget.com/news/article/0,289142,sid96\\_gci1350771,00.html](http://searchitchannel.techtarget.com/news/article/0,289142,sid96_gci1350771,00.html).

16           Reflecting Oracle's insistence that its licensees "have no choice but to pay" Oracle these  
 17           annual fees, Oracle has attempted to make it impossible for its customers to use their software  
 18           documentation and support materials absent an ongoing support agreement with Oracle. As set forth  
 19           by Rimini Street's counterclaim:

20           Instead of simply providing its customers each of the support files they are entitled to  
 21           possess under their respective licenses and unexpired Oracle annual support, Oracle  
 22           requires customers to self-identify and individually download each such file from  
 23           Oracle's support material web portal. This portal contains millions of files to sort  
 24           through . . .

25           Ex. A at para. 63. Despite these millions of files, "Oracle provides no assistance to its support  
 26           customers in the identification of all Oracle Software and Support Materials such customer is  
 27           entitled to possess and use." *Id.* In addition, "Oracle has changed its web site terms to prohibit the  
 28           use of automated tools that can help an Oracle customer identify and download a significant volume

<sup>1</sup> And even if it were, the copyright act itself is not a justification for abuse. *See United States v. Microsoft Corp.*, 253 F. 3d 34, 63 (D.C. Cir. 2001) (Microsoft "claims an absolute and unfettered right to use its intellectual property as it wishes . . . That is no more correct than the proposition that use of one's personal property, such as a baseball bat, cannot give rise to tort liability.").

1 of Oracle Software and Support Materials to which an Oracle licensee and support customer is  
 2 entitled.” *Id.* at para. 64. Oracle’s actions were not only anti-competitive against Rimini Street, but  
 3 “also constituted a breach of its license agreements with Oracle clients that have protections against  
 4 reductions in service rights resulting from changes by Oracle in support terms and conditions.” *Id.*  
 5 at para. 27.

6 Further, Oracle’s “click-wrap” agreement “includes a provision that prohibits access to and  
 7 download of support materials unless such access or download ‘is in furtherance of the relationship  
 8 between customer and Oracle.’” *Id.* at para. 64. This provision is designed to give Oracle broad  
 9 discretion in alleging contractual and copyright violations against third party vendors (such as in the  
 10 present action) and represents another clear example of Oracle’s “systematic use of anticompetitive  
 11 tactics to try and maintain a stranglehold over its customers by effectively requiring them to either  
 12 continue purchasing after-market support only from Oracle or forego critical support materials to  
 13 which they are entitled and for which they have already paid.” *Id.* at para. 64.

14 The fact that Oracle adopted most of these policies in direct response to third-party  
 15 competition only heightens the inference that these are acts aimed to leverage its copyright privileges  
 16 in a manner “violative of the public policy embodied in the grant of a copyright.” *Lasercomb*, 911  
 17 F.2d at 978. Indeed, it is normally misuse to leverage copyrights to attempt to obtain an after-market  
 18 monopoly. *See Chamberlain Group v. Skylink Tech., Inc.*, 381 F. 3d 1178, 1201 (Fed. Cir.  
 19 2004)(copyright misuse normally prohibits a company from “leverage[ing] its sales into after-market  
 20 monopolies.”); *In re Napster, Inc. Copyright Litig.*, 191 F. Supp. 2d 1087, 1108, 1109, 1112, 1110  
 21 (N.D. Cal. 2002) (noting potential antitrust violations underlying misuse claim). By pleading facts  
 22 demonstrating that Oracle has effected unduly restrictive license agreements and engaged technical  
 23 means to attempt to create an after-market monopoly with respect to uncopyrighted maintenance and  
 24 support services, Rimini Street has stated a claim for copyright misuse.

25 **2. Misuse Occurs When a Copyright Holder Attempts to Use its Copyrights**  
 26 **to Effectively Prohibit Competition as to Uncopyrighted Articles Or**  
**Services.**

27 Taking an improperly narrow view of the misuse doctrine, Oracle urges that copyright  
 28 misuse requires an express license provision: (1) prohibiting a customer from doing business with a

competitor; or (2) prohibiting the development of competitive works. Doc. No. 50 at 16-17. This is incorrect. Copyright misuse occurs where a license agreement is unduly restrictive. For instance, a license may be unduly restrictive where it *effectively* prohibits competition, even if it does not contain an expressly anti-competitive provision. *Alcatel USA, Inc. v. DGI Technologies, Inc.*, 166 F.3d 772, 794 (5th Cir. 1999) (“DSC’s assertion that its licensing agreement does not prohibit the independent development of compatible software is simply irrelevant . . . DGI was *effectively* prevented from developing its product, thereby securing for DSC a limited monopoly over its uncopyrighted microprocessor cards.”)(emphasis added); *In re Napster, Inc. Copyright Litigation*, 191 F. Supp. 2d 1087, 1103 (N.D. Cal. 2002)(“the provision *effectively* grants MusicNet control over which content Napster licenses”)(emphasis added). The dispositive fact is whether the copyright holder has attempted to leverage its copyrights to gain control of an area outside of copyright, whether expressly or effectively. *A&M Records, Inc. v. Napster, Inc.*, 239 F.3d 1004, 1026-27 (9th Cir. 2001)(“The misuse defense prevents copyright holders from leveraging their limited monopoly to allow them control of areas outside the monopoly . . . There is no evidence here that plaintiffs seek to control areas outside of their grant of monopoly.”); *Lasercomb Am., Inc. v. Reynolds*, 911 F.2d 970, 979 (4th Cir. 1990)(“The misuse arises from Lasercomb’s attempt to use its copyright . . . to control competition in an area outside the copyright.”).

The *Alcatel* case illustrates that a finding of misuse is not limited to whether a license agreement expressly prohibits competition. In that case, the relevant license limited the use of the plaintiff’s copyrighted software to equipment that was manufactured by the plaintiff. *Alcatel*, 166 F.3d at 777 (under the license agreement, “the customers are authorized to use the software only in conjunction with DSC-manufactured equipment.”). On these facts, the court had no trouble finding misuse because the license restrictions made it *technically* infeasible to develop a competing product:

[Plaintiff] DSC’s assertion that its licensing agreement does not prohibit the independent development of compatible software is simply irrelevant. Despite the presence of some evidence—the testimony of a DSC executive—that DGI could have developed its own software, there was also evidence that it was not technically feasible . . . DGI was *effectively* prevented from developing its product, thereby securing for DSC a limited monopoly over its uncopyrighted microprocessor cards.

1 *Alcatel*, 166 F. 3d at 777 (emphasis added). As illustrated by the *Alcatel* opinion, whether a license  
 2 agreement expressly prohibits competition is not the question. The question is whether the copyright  
 3 holder is attempting to use its copyrights to secure a monopoly outside of its copyright.

4 The *Napster* case further illustrates this point. Similar to *Alcatel*, the *Napster* license  
 5 agreement did not contain a provision expressly prohibiting competition. *In re Napster*, 191 F.  
 6 Supp. 2d at 1103. But *the effect* of the agreement, examined in light of the practicalities of the music  
 7 industry, allowed the plaintiffs to impermissibly expand their copyright monopoly:

8 The MusicNet provision is non-exclusive. Napster may obtain licenses from any of  
 9 the record label plaintiffs . . . Despite this theoretical non-exclusivity, the provision  
 10 effectively grants MusicNet control over which content Napster licenses . . . The  
 result is an expansion of the powers of the three MusicNet plaintiffs' copyrights to  
 cover the catalogs of the two non-MusicNet plaintiffs.

11 *Id.* (emphasis added). The *Napster* Court recognized that the potential *effect* of a license must be  
 12 examined to determine whether copyrights have been misused. *See id.*

13 The cases cited by Oracle are in accord. For instance, Oracle relies heavily on *Triad*, a case  
 14 decided prior to the explicit adoption of the misuse doctrine by the 9th Circuit. *See* Doc. No. 50 at  
 15 15 – 16. Even this early misuse case rested on the lack of licensing practices that unduly extended  
 16 the scope of copyrights, not the lack of an express provision. *Triad Systems Corp. v. Southeastern*  
 17 *Express Co.*, 64 F.3d 1330, 1337 (9th Cir. 1995) (“[U]nlike the case of *Lasercomb*, Triad did not  
 18 attempt to prohibit Southeastern or any other ISO from developing its own service software to  
 19 compete with Triad.”)(citation omitted).<sup>2</sup> While an unduly restrictive license agreement is indeed  
 20 one way in which a copyright holder may misuse its copyrights, Oracle fails to cite a single case  
 21 holding that an expressly anticompetitive licensing provision is required.

22 Consistent with the *Alcatel*, *Napster* and *Triad* holdings, the misuse question is not merely  
 23 whether a license provision expressly prohibits competition, but “whether the copyright is being  
 24 used in a manner violative of the public policy embodied in the grant of a copyright.” *Lasercomb*,

25 <sup>2</sup> Oracle’s other “*Triad*” line of cases are also in accord. *See Advanced Computer Services of*  
 26 *Michigan, Inc. v. MAI Systems Corp.*, 845 F. Supp. 356, 367 (E.D. Va. 1994) (denying  
 27 misuse defense at summary judgment stage, noting license did not contain “restrictions  
 28 *designed to prevent* the alleged infringer from developing competing software” and there  
 were no other public policy violations)(emphasis added); *Psystar*, 673 F. Supp. 2d at 933  
 (denying Psystar’s summary judgment motion for misuse, explaining that “Apple has not  
 prohibited others from independently developing and using their own operating systems.”).

1 911 F.2d at 978; *Apple, Inc. v. Psystar Corp.*, 673 F. Supp. 2d 931, 939 (N.D. Cal. 2009). As  
 2 previously mentioned, it is generally misuse to leverage copyrights to attempt to obtain an after-  
 3 market monopoly. *Chamberlain Group*, 381 F. 3d at 1201 (copyright misuse normally prohibits a  
 4 company from “leverage[ing] its sales into after-market monopolies.”). It is also misuse to leverage  
 5 copyrights to attempt price fixing or other anti-trust violations. *In re Napster*, 191 F. Supp. 2d at  
 6 1103 (“Napster has raised serious questions with respect to possible copyright misuse, based on both  
 7 the MusicNet agreement and plaintiffs’ possible antitrust violations in their entry into digital music  
 8 delivery.”). It is likewise misuse to attempt to use copyrights to control uncopyrightable data. *See*  
 9 *Assessment Techs. Of WI, LLC v. WIREdata, Inc.*, 350 F.3d 640, 647 (7th Cir. 2003)(Posner, J.)  
 10 (explaining that copyright misuse may occur through “an infringement suit to obtain property  
 11 protection, here in data, that copyright law clearly does not confer.”). It may also be misuse to use  
 12 copyrights to control fair uses of copyrighted material. *See Video Pipeline v. Buena Vista Home*  
 13 *Entertainment*, 342 F. 3d 191, 205 (3rd Cir. 2003) (“The fair use doctrine and the refusal to  
 14 copyright facts and ideas also address applications of copyright protection that would otherwise  
 15 conflict with a copyright’s constitutional goal.”) (citing *Eldred v. Ashcroft*, 537 U.S. 186, 123 S.Ct.  
 16 769, 789 (2003); *Campbell v. Acuff-Rose Music, Inc.*, 510 US 569, 575 & n.5 (1994)). In short,  
 17 misuse may be found based on any number of actions by a copyright holder, including when actions  
 18 by the copyright holder *effectively* prohibit competition as to uncopyrighted services, as Rimini  
 19 Street has alleged in its counterclaim.

20 As set forth by these pleadings, Oracle’s software licensees are entitled to (and have paid for)  
 21 important support materials on Oracle’s websites, but the technical design of these websites makes it  
 22 impossible for the licensees to identify all the materials to which they are entitled, thereby forcing  
 23 the licensees to employ Oracle’s uncopyrightable support services. Oracle’s attempt to prohibit  
 24 competition is further reflected by its website terms prohibiting use of automated tools. Given the  
 25 millions of support files, such tools represent the only viable means, absent a support contract with  
 26 Oracle, for a licensee to receive all the support materials to which it is entitled. Further, Oracle’s  
 27 term of use prohibiting “access to and download of support materials unless such access or  
 28 download ‘is in furtherance of the relationship between customer and Oracle’” (Ex. A at para. 64),



1 represents yet another clear example of Oracle's attempt to employ unduly restrictive licensing  
 2 provision to effectively prohibit competition. Oracle has used its copyright in a manner violative of  
 3 the public policy beyond the grant of its copyrights and, thus, has committed copyright misuse.

4 **3. Oracle's Challenge to the "Plausibility" of Rimini Street's Factual**  
 5 **Allegations is Fatally Flawed.**

6 Though Rimini Street's pleadings demonstrate attempts by Oracle to destroy competition for  
 7 after-market support services, Oracle resorts to challenging the plausibility of these factual  
 8 allegations, arguing that "Rimini has not pled a plausible claim that Oracle has 'effectively'  
 9 foreclosed competition" because hundreds of customers have 'already made the switch to Rimini'"  
 10 Street. Doc. No. 50 at 18-19. This argument is, at best, disingenuous.

11 Oracle alleges that Rimini Street and its employees are thieves carrying out a "corrupt" and  
 12 "illegal business model." Alleging, *inter alia*, breach of the very contracts underlying Rimini  
 13 Street's misuse claims, Oracle states that it brought the present suit to stop "once and for all" Rimini  
 14 Street's illegal activities. Oracle cannot credibly argue that Rimini Street's success demonstrates the  
 15 absence of misuse, while at the same time attributing this very success to "illegal" violations of its  
 16 intellectual property rights, which Oracle seeks to enjoin.

17 Indeed, as the *Napster* opinion demonstrates, in the face of Rimini Street's well-plead  
 18 allegations of misuse, discovery must be allowed to proceed on the misuse claim:

19 Napster has raised serious questions with respect to possible copyright misuse, based  
 20 on both the MusicNet agreement and plaintiffs' possible antitrust violations in their  
 21 entry into digital music delivery . . . For the time being, however, neither side has  
 22 sufficiently developed the factual and legal bases for their arguments. The evidence  
 presently before the court suggests that Napster needs further discovery in order to  
 sufficiently oppose plaintiffs' motion for summary judgment.

23 *In re Napster*, 191 F. Supp. 2d at 1103.<sup>3</sup> As in *Napster*, through discovery Rimini is likely to

24 <sup>3</sup> It should also be noted that even Oracle's *Triad* line of cases each proceeded to the summary  
 25 judgment stage and rested upon a lack of anticompetitive tactics. *Triad Systems Corp. v.*  
 26 *Southeastern Express Co.*, 64 F.3d 1330, 1337 (9th Cir. 1995)(upholding summary judgment  
 27 ruling for lack of anticompetitive actions)(citation omitted); *Advanced Computer Services of*  
 28 *Michigan, Inc. v. MAI Systems Corp.*, 845 F. Supp. 356, 367 (E.D. Va. 1994) (denying  
 misuse defense at summary judgment stage, finding an absence of public policy  
 violations)(emphasis added); *Psystar*, 673 F. Supp. 2d at 933 (denying Psystar's summary  
 judgment motion for misuse).

1 uncover even more unduly restrictive license provisions, contracts and other anti-competitive  
2 behavior by Oracle.

3 A court may only grant a motion to dismiss under Rule 12(b)(6) “if it is certain that the  
4 [party] will not be entitled to relief under any set of facts that could be proven under the allegations  
5 of the complaint” (*Moulton v. Eugene Burger Management Corp.*, 2009 WL 2004373 \*1 (D. Nev.  
6 2009)), Oracle has not and cannot meet this standard because it is far from “a certainty that [Rimini  
7 Street] will not be entitled to relief under any set of facts.” *Sonntag v. Balaam, et al.*, 3:07-CV-311-  
8 *RCJ(RAM)*., 2009 WL 3416504, at \*2. (Oct. 23, 2009, D. Nev). Therefore, Oracle’s motion to  
9 dismiss Rimini Street’s counterclaim and affirmative defense for copyright misuse should be denied.

10 **C. Rimini Street has Stated a Claim for Violations of California’s Unfair**  
11 **Competition Law.**

12 Finally, Oracle moves to dismiss Rimini Street’s counterclaims for violation of California’s  
13 Unfair Competition Law (“UCL”). First, Oracle argues, “To the extent Rimini attempts to base an  
14 unlawful claim on its tort or copyright misuse claims, its UCL claim fails for the same reasons as the  
15 tort and copyright misuse” counterclaims. Doc. No. 50 at 26. As discussed, Rimini Street’s  
16 defamation and copyright misuse claims have been sufficiently pled. Therefore, Oracle’s motion to  
17 dismiss Rimini Street’s Unfair Competition Claim fails for the same reasons set forth, *supra*, with  
18 respect to Rimini Street’s first two counterclaims.

19 Second, Oracle suggests that Rimini Street’s copyright misuse claim cannot form basis for  
20 misuse because it is merely an equitable form of relief. Contrary to Oracle’s suggestion, the “scope  
21 of conduct covered by the UCL is broad,” and the UCL itself “is equitable in nature.” *Korea Supply*  
22 *Co. v. Lockheed Martin Corp.*, 29 Cal. 4th 1134, 1144, 131 Cal. Rptr. 2d 29, 63 P.3d 937 (2003). Put  
23 simply, Oracle is incorrect to suggest that equitable claims, such as copyright misuse, cannot form  
24 the basis of a claim under the UCL. *See Cel-Tech Commc’ns, Inc. v. Los Angeles Cellular Tel. Co.*,  
25 20 Cal. 4th 163, 18 (Cal. 1999) (California’s Unfair Competition Law “borrows violations of other  
26 laws and treats them as unlawful practices that the unfair competition law makes independently  
27 actionable.”). By stating a claim for both copyright misuse and defamation/trade libel, Rimini Street  
28 has stated a claim for relief under the UCL. Therefore, Oracle’s motion to dismiss must be denied



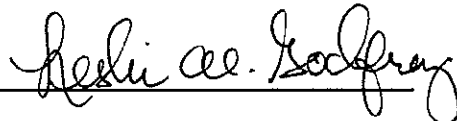
1 with respect to Rimini Street's third counterclaim as well.

2 **IV. CONCLUSION**

3 For the foregoing reasons, Rimini Street has sufficiently pled its claims for (1) defamation,  
 4 business disparagement and trade libel; (2) copyright misuse; and (3) violations of California's  
 5 Unfair Competition Law, Cal. Bus. & Prof. Code § 17200. Rimini Street has also sufficiently pled  
 6 its fourth affirmative defense of copyright misuse. Oracle's motion to dismiss should be denied in  
 7 all respect.

9 DATED: MAY 24, 2010

GREENBERG TRAURIG

10 By: 

11  
 12 Mark G. Tratos, Esq. (Nevada Bar No. 1086)  
 13 Brandon Roos, Esq. (Nevada Bar No. 7888)  
 14 Leslie Godfrey, Esq. (Nevada Bar No. 10229)  
 3773 Howard Hughes Parkway  
 Suite 400 North  
 Las Vegas, NV 89169

15 *Attorney for Defendants*  
 16 *Rimini Street, Inc. and Seth Ravin*

I hereby certify that on the 24th day of May, 2010, I electronically filed the foregoing document with the clerk of the court for the U.S. District Court, District of Nevada, using the electronic case filing system. The electronic case filing system sent a "Notice of Electronic Filing" to the attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means.

By:

Valenclarsen  
An Employee of Greenberg Traurig

# Exhibit A

# Exhibit A

SHOOK, HARDY & BACON LLP  
B. Trent Webb, Esq. (*pro hac vice*)  
Eric Buresh, Esq. (*pro hac vice*)  
2555 Grand Boulevard  
Kansas City, Missouri 64108-2613  
Telephone: (816) 474-6550  
Facsimile: (816) 421-5547  
[bwebb@shb.com](mailto:bwebb@shb.com)  
[eburesh@shb.com](mailto:eburesh@shb.com)

Robert H. Reckers, Esq. (*pro hac vice*)  
600 Travis Street, Suite 1600  
Houston, Texas 77002  
Telephone: (713) 227-8008  
Facsimile: (731) 227-9508  
[rreckers@shb.com](mailto:rreckers@shb.com)

GREENBERG TRAURIG  
Mark G. Tratos, Esq. (Nevada Bar No. 1086)  
Brandon Roos, Esq. (Nevada Bar No. 7888)  
Leslie Godfrey, Esq. (Nevada Bar No. 10229)  
3773 Howard Hughes Parkway  
Suite 400 North  
Las Vegas, NV 89169  
Telephone: (702) 792-3773  
Facsimile: (702) 792-9002  
[tratosm@gtlaw.com](mailto:tratosm@gtlaw.com)  
[roosb@gtlaw.com](mailto:roosb@gtlaw.com)  
[godfrey1@gtlaw.com](mailto:godfrey1@gtlaw.com)

*Attorneys for Defendants*  
*RIMINI STREET, INC. and SETH RAVIN*

WILSON SONSINI GOODRICH & ROSATI  
Jonathan M. Jacobson, Esq.  
1301 Avenue of the Americas, 40<sup>th</sup> Floor  
New York, New York, 110019  
Telephone: (212) 999-5800  
Facsimile: (212) 999-5899  
[jjacobson@wsgr.com](mailto:jjacobson@wsgr.com)  
(*pro hac vice applications to be submitted*)

Michael B. Levin, Esq.  
650 Page Mill Road  
Palo Alto, CA 94304-1050  
Telephone: (650) 493- 9300  
Facsimile: (650) 493 - 6811  
[mlevin@wsgr.com](mailto:mlevin@wsgr.com)  
(*pro hac vice application to be submitted*)

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

ORACLE USA, INC., a Colorado corporation;  
ORACLE AMERICA, INC. a Delaware  
corporation; and ORACLE INTERNATIONAL  
CORPORATION, a California corporation,

Plaintiffs,

v.

RIMINI STREET, INC., a Nevada corporation;  
SETH RAVIN, an individual,

Defendants.

Case No. 2:10-cv-0106-LRH-PAL

**DEFENDANT RIMINI  
STREET INC.'S ANSWER TO  
ORACLE'S FIRST AMENDED  
COMPLAINT AND FIRST  
AMENDED COUNTERCLAIM**

**RIMINI STREET INC.'S ANSWER AND COUNTERCLAIM**

Defendant Rimini Street Inc. ("Rimini Street") for its Answer and Counterclaim against Plaintiffs Oracle USA, Inc. ("Oracle USA"), Oracle America, Inc. ("Oracle America"), and Oracle International Corporation ("OIC") (together "Oracle" or "Plaintiffs") allege as follows based on its personal knowledge as for itself, and on information and belief as to the acts of others:

**I. FACTUAL BACKGROUND**

1. "We believe we should be the ones to support our customers, . . . . If you're a third-party support provider offering multivendor support, we're coming, we're coming." (Juergen Rottler, Oracle's Executive Vice President of Global Customer Services, threatening third-party support vendors that compete with Oracle).<sup>1</sup> Oracle made this public threat just one day after filing its Complaint against Rimini Street.

**A. Rimini Street Vehemently Denies Oracle's Knowingly False Accusations.**

2. Oracle maliciously alleges that Rimini Street's business is an "illegal business model," an "illegal scheme," and that there has been "massive theft of Oracle's software and related support materials by Rimini Street." These accusations are false, and Rimini Street vehemently denies them.

3. Rimini Street's business processes and procedures are entirely legal, and Rimini Street has not committed "massive theft," or any theft at all. Rimini Street is authorized by every one of its clients to perform work on their behalf, and, as a matter of process and procedure, has delivered Oracle Software and Support Materials<sup>2</sup> only to clients who were entitled to them and only within the scope of that client's entitlement.

4. Far from Oracle's "massive theft" allegation, Rimini Street has implemented extraordinary processes and procedures to assure the proper use of Oracle's intellectual property. For example, Rimini Street performs a unique download of Oracle Software and Support Materials on behalf of each client that authorizes and requests such service. Rimini Street maintains

<sup>1</sup> Richard Adhikari, *Oracle Puts Third-Party Support in Crosshairs*, E-COMMERCE TIMES, Jan. 28, 2010, <http://www.ecommercetimes.com/story/69217.html> (last visited Mar. 1, 2010).

<sup>2</sup> Oracle software applications, updates, bug fixes, patches, across the entire PeopleSoft, JD Edwards and Siebel families of software products are referred to throughout as "Oracle Software and Support Materials."

1 downloaded material only on behalf of the client for whom the download was performed. And, as a  
 2 matter of process and procedure, each client is assigned a separate data “silo” where Oracle Software  
 3 and Support Materials for only that client are maintained. Rimini Street does not co-mingle the  
 4 independent downloads of clients.

5           5. With respect to Oracle’s complaint about Rimini Street possessing copies of  
 6 Oracle customer licensed software, Oracle customers authorize Rimini Street to possess and use such  
 7 copies. Not only is possessing and using the copies legal, it is an industry standard for third party  
 8 vendors like IBM, AT&T, Accenture, CedarCrestone, and countless others who work with the same  
 9 Oracle customer licensed software. Oracle is well aware of Rimini Street’s authorized possession  
 10 and usage of customer licensed software because Oracle itself delivered the software to Rimini  
 11 Street for hundreds of its customers.

12           6. Oracle is fully aware of Rimini Street’s processes and procedures. If Oracle  
 13 had genuine concerns about Rimini Street’s use of its intellectual property, Oracle could have  
 14 accepted Rimini Street’s numerous offers since September 2005 to openly and transparently review  
 15 and discuss Rimini Street processes and procedures, or Oracle could have even accepted Rimini  
 16 Street’s invitation to review internal materials and Rimini Street’s invitation to have a third-party  
 17 independent auditor review Rimini Street’s compliance with its processes and procedures.

18           7. Instead, Oracle chose to ignore the fact that Rimini Street’s processes and  
 19 procedures are legal and supported by industry-leading practices. Oracle initiated this baseless  
 20 litigation as another anticompetitive tactic to try and slow Rimini Street’s fast-paced growth and  
 21 protect Oracle’s dominant 95% market share and monopoly-like 92% gross profit margins on the  
 22 after-market support of its products.<sup>3</sup>

23           8. Rimini Street will aggressively defend against this baseless litigation and has  
 24 counterclaimed herein so as to end Oracle’s five year campaign of illegal anticompetitive tactics  
 25 against Rimini Street and to hold Oracle accountable for its actions, related costs and damages.

26           **B. Oracle Prefers Competition in the Courtroom Rather than the Marketplace.**

27  
 28 <sup>3</sup> See Thomas Wailgum, *ERP Support Drama: How Far Will Oracle Go to Protect Its Golden Egg?*, CIO MAGAZINE,  
 Feb. 24, 2010, <http://www.cio.com/article/554113/> (last visited Mar. 2, 2010).

1           9. Oracle is the world's largest enterprise software company. Rimini Street  
2 provides after-market support services for enterprise software applications—including software  
3 applications licensed by Oracle.

4           10. Rimini Street is Oracle's fastest-growing competitor for the after-market  
5 support business of Oracle's Siebel, PeopleSoft and JD Edwards enterprise software products.  
6 Hundreds of Fortune 500, mid market, small and public sector organizations around the world have  
7 already made the switch to Rimini Street's innovative, award-winning and highly-praised support  
8 model. Rimini Street has been forecasting significant continued year-over-year growth based on  
9 sales pipeline data.

10           11. Rimini Street's success and growing industry acceptance as a proven  
11 alternative to Oracle's much more expensive after-market support offerings is now threatening  
12 Oracle's market control and pricing power. In response, Oracle has now turned to the courtroom  
13 instead of choosing to compete in an open and fair market. Oracle's strategy is to use this calculated  
14 litigation to protect its share of the after-market support business for Oracle software products and  
15 preserve or increase its profit margin on those services.

16           12. With a staggering \$800 million in quarterly losses in its core businesses,<sup>4</sup>  
17 Oracle's power, profits and financial strength can only be maintained if it can continue coercing its  
18 customers into paying exorbitant annual fees for after-market support of its products.

19           **C. Rimini Street is Oracle's Primary Competition for After-Market Support.**

20           13. In 2009, Rimini Street saw growth of more than 270% in year-over-year  
21 revenue, more than doubled its global client base to nearly 300, added substantial new international  
22 clients, accumulated nearly \$150 million in sales backlog, and more than doubled its global  
23 workforce to 160 professionals. Rimini Street achieved a 95% annual client renewal rate and more  
24 than a 99% client satisfaction rating.

25           14. One reason Oracle's support customers switch to Rimini Street support is a  
26 50% annual fee savings. Rimini Street is able to spend more money on each support client and offer

27  
28 <sup>4</sup> *Id.*

1 lower fees by simply eliminating the excessive profits Oracle demands from its support customers.  
2 Also, due to Rimini Street's dramatically different support model that includes no required upgrades  
3 or updates for a minimum of ten years, Rimini Street clients can achieve a total operating cost  
4 savings up to 90% over a decade compared to Oracle's support model.

5           15. In addition to significant savings, Rimini Street's different support model  
6 provides clients with "concierge" level, ultra-responsive service. Unlike Oracle's generic call center  
7 approach, Rimini Street assigns each client a named, highly experienced Primary Support Engineer.  
8 Support services are available 24x7x365 with guaranteed 30 minute response time anywhere in the  
9 world and 90% guaranteed live call answering during the day. Rimini Street's track-record of  
10 meeting these service level commitments and providing excellent service is well documented by  
11 leading industry analysts who work with Rimini Street clients, media interviews with Rimini Street  
12 clients, client side-by-side live service comparisons, client satisfaction surveys, and hundreds of  
13 client reference calls made by Rimini Street prospects.

14           16. Rimini Street's different support model also includes many innovative  
15 services at no additional charge that go beyond the features of Oracle's standard support. The  
16 additional Rimini Street services include performance support, interoperability support, and support  
17 for application customizations. The inclusion of these services represents significant cost savings for  
18 Rimini Street clients compared to the additional consulting fees Oracle would generally charge its  
19 customers for similar services.

20           17. Another benefit for Oracle clients who switch to Rimini Street support is a  
21 more robust and timely tax, legal and regulatory service spanning up to 190 countries for PeopleSoft  
22 and JD Edwards products. Rimini Street's tax, legal and regulatory update design and development  
23 operation is led by veteran tax specialists, attorneys, executives, and engineers who bring a blend of  
24 international tax, legal and regulatory expertise. As part of Rimini Street's commitment to the  
25 highest quality deliverables, Rimini Street's tax, legal and regulatory development process has been  
26 audited from scoping to delivery for Sarbanes Oxley 404 process compliance by a Big Four  
27 accounting firm.

28           18. Rimini Street has already delivered more than 5,000 high-quality tax, legal



1 and regulatory updates to its clients over the years, and is currently responsible for the accurate  
2 processing of billions of dollars in transactions a month. Further, Rimini Street has delivered every  
3 one of its tax, legal and regulatory updates to clients ahead of Oracle's planned delivery date for its  
4 equivalent updates since the inception of the company. Rimini Street clients praise the quality,  
5 comprehensiveness and timely delivery of Rimini Street's tax, legal and regulatory updates in media  
6 interviews, client references for prospects, and press materials.

7           19. Rimini Street respects the intellectual property rights of Oracle. As detailed  
8 herein, Rimini Street takes extraordinary efforts, in both process and procedure, to ensure that  
9 Oracle's intellectual property rights are respected by Rimini Street employees working with Oracle  
10 Software and Support Materials.

11           **D. Oracle has a Long History of Trying to Stifle Rimini Street Competition.**

12           20. The present lawsuit is only Oracle's latest effort to stifle the competitive threat  
13 posed by Rimini Street.

14           21. Rimini Street began operations in September 2005, offering a competitive  
15 after-market support offering for Siebel Systems software products.

16           22. At about the same time Rimini Street began operations, Oracle Corporation  
17 announced that it intended to acquire Siebel Systems. Oracle completed the acquisition of Siebel  
18 Systems shortly thereafter.

19           23. Rimini Street added support offerings for Oracle's PeopleSoft products in  
20 April 2006 and Oracle's JD Edwards products in September 2006.

21           24. Since shortly after Rimini Street's inception, Oracle began a systematic  
22 campaign to disrupt and halt Rimini Street's business. Initially, Oracle's efforts consisted of  
23 numerous hostile letters, some of which were published in the media as early as 2005 as examples of  
24 how Oracle was trying to forestall after-market competition from a just-launched Rimini Street.

25           25. Over the years, Rimini Street responded to each Oracle letter, explained the  
26 appropriateness of Rimini Street's practices and procedures, and repeatedly offered to meet and  
27 discuss any questions or concerns Oracle might have about Rimini Street's processes and  
28 procedures.

1           26. As Rimini Street's success grew, so did Oracle's determination and efforts to  
2 disrupt Rimini Street's growth. Since the inception of the company, Rimini Street used automated  
3 download tools to help its clients identify and take delivery of the large volume of Oracle Software  
4 and Support Materials they paid for and were entitled to possess and use (potentially tens of  
5 thousand of files for a single customer). Using such automated tools was necessary because Oracle  
6 refused to help its customers identify and take delivery of such large volumes of materials.

7           27. In June 2007, Oracle attempted to intentionally interfere with Rimini Street's  
8 authorized client downloads by changing its website terms and conditions to no longer allow use of  
9 such automated download tools. Rimini Street wrote Oracle when it became aware of the change,  
10 warning that Rimini Street believed Oracle's actions were not only anti-competitive against Rimini  
11 Street, but also constituted a breach of its license agreements with Oracle clients that have  
12 protections against reductions in service rights resulting from changes by Oracle in support terms  
13 and conditions. As such, the reductions in service rights were not enforceable.

14           28. Oracle's efforts escalated in December 2008 when Oracle began interfering  
15 with Rimini Street's performance of an authorized download for a large client switching from Oracle  
16 to Rimini Street support by blocking Rimini Street access to the Oracle support websites. After  
17 correspondence from both the client and Rimini Street demanding Oracle cease and desist its access-  
18 blocking tactics, Oracle stopped the interference.

19           29. At this point, as a good-faith attempt at conflict reduction with Oracle, Rimini  
20 Street unilaterally agreed to cease using automated download tools in January 2009 and notified  
21 Oracle's representatives of this decision in early February 2009.

22           30. Further, to prevent Oracle's anti-competitive actions from occurring in the  
23 future, Rimini Street asked for and was finally granted a call with Oracle representatives in early  
24 February 2009. On the call, Rimini Street offered to share Rimini Street internal information with  
25 Oracle and/or to work out an agreement that would utilize an independent third party auditor  
26 reporting back to both parties to confirm Rimini Street's compliance with its standard processes and  
27 procedures. Oracle never responded to any of Rimini Street's proposals.

28           **E. Oracle Ignores Truth, Turns to False Allegations**

1           31. Ignoring Rimini Street's open invitation to view internal information, engage  
2 a third party auditor, or even hold additional dialogue, Oracle filed this baseless lawsuit in an attempt  
3 to disrupt Rimini Street's growth and damage Rimini Street's business through false statements and  
4 disparagement.

5           32. For example, Oracle maliciously casts Rimini Street as a "sham" company  
6 that steals Oracle Software and Support Materials and resells them at half the price Oracle charges.  
7 Oracle further disparages Rimini Street's business by branding it an "illegal business model" and  
8 "illegal scheme." Similarly, Oracle falsely states that there has been "massive theft of Oracle's  
9 software and related support materials by Rimini Street." As Oracle is well aware, these  
10 characterizations of Rimini Street's business are not only completely false, but they could not be  
11 further from the truth.

12           33. Rimini Street has informed Oracle that, as a matter of process and procedure,  
13 Rimini Street's clients are only delivered the Oracle Software and Support Materials to which they  
14 are legally entitled. In fact, Rimini Street performs a unique download of Oracle Software and  
15 Support Materials from Oracle's web sites on behalf of each of its clients who: (a) requests and  
16 authorizes Rimini Street to download from Oracle on their behalf a unique set of Oracle Software  
17 and Support Materials the customer is entitled to use based on their licensed products and Oracle  
18 Annual Support product coverage; and (b) represents they are presently an Oracle Annual Support  
19 customer whose Oracle Annual Support period has not expired.

20           34. Oracle is further aware that each of Rimini Street's clients has a unique data  
21 "silo" for storing clients' Oracle Software and Support Materials. Therefore, the clients' Oracle  
22 Software and Support Materials are not physically co-mingled together. Despite its awareness of  
23 Rimini Street's processes and procedures, Oracle states that Rimini Street has "stockpile[d] a  
24 library" of Oracle's intellectual property "to support its present and prospective customers." Such a  
25 "library" has never existed at Rimini Street, and Oracle is aware of that fact and could easily have  
26 confirmed it by simply accepting Rimini Street's offer of third party verification.

27           35. If Oracle really had genuine concerns about the use of its intellectual property  
28 and its aims were to simply find the truth and to protect its intellectual property, Oracle has had

1 unlimited opportunities over nearly five years to dialogue and work directly with Rimini Street per  
 2 the numerous open invitations extended in Rimini Street letters to Oracle. But, as the facts  
 3 demonstrate, that is not Oracle's objective. Instead, Oracle's goal is to forestall after-market product  
 4 support competition from Rimini Street. Litigation is Oracle's strategy.

5 36. While Oracle attempts to disparage Rimini Street and falsely cast this case as  
 6 being about a "massive theft" that does not exist, the truth is this case is only about Oracle's attempt  
 7 to protect its 95% dominant market share and monopoly-like 92% gross margins on after-market  
 8 support of its products.

### 9 **RIMINI STREET'S COUNTERCLAIM**

10 For its Counterclaims against Plaintiffs, Rimini Street states as follows:

#### 11 **II. JURISDICTION**

12 37. This Court has subject matter jurisdiction over Rimini Street's counterclaims  
 13 under 28 U.S.C. §§ 1338, 1367 and 2201, and Rule 13 of the Federal Rules of Civil Procedure.

14 38. In addition, this Court has original subject matter jurisdiction over the state  
 15 law claims under 28 U.S.C. § 1332 because there is complete diversity of citizenship between the  
 16 Plaintiffs and Rimini Street, and the amount in controversy exceeds \$75,000.

#### 17 **III. THE PARTIES**

18 39. Rimini Street is a Nevada corporation, with its principal place of business in  
 19 Las Vegas, Nevada. Rimini Street develops support products and provides support and maintenance  
 20 for enterprise software, including software licensed by Oracle.

21 40. Oracle USA is a Colorado corporation, with its principal place of business in  
 22 Redwood City, California.

23 41. Oracle America is a Delaware corporation, with its principal place of business  
 24 in Redwood City, California.

25 42. Oracle International Corporation is a California corporation, with its principal  
 26 place of business in Redwood City, California.

#### 27 **COUNT ONE—DEFAMATION, BUSINESS DISPARAGEMENT AND TRADE LIBEL**

28 43. Rimini Street repeats and incorporates by reference the averments set forth in

1 Paragraphs 1–42 as though fully set forth herein.

2 44. Oracle has responded to Rimini Street’s success, not through fair marketplace  
3 competition, but with incendiary and unfounded allegations that Rimini Street and its employees are  
4 thieves carrying out a “corrupt” and “illegal business model.”

5 45. On information and belief, defamatory statements have been published and  
6 republished by Oracle and its agents to members of the media and analyst community, Rimini  
7 Street’s customers and potential customers, as well as to the public at large. For example, Oracle  
8 spokesperson Deborah Hellinger publically accused Rimini Street and Mr. Ravin on March 29, 2010  
9 of engaging in “massive theft” of Oracle’s intellectual property. These statements were widely  
10 published in the media. *See*, John Letzing, *Upstart fires back at Oracle in legal battle*,  
11 *MarketWatch*, Mar. 29, 2010, [http://www.marketwatch.com/story/upstart-fires-back-at-oracle-in-](http://www.marketwatch.com/story/upstart-fires-back-at-oracle-in-legal-battle-2010-03-29)  
12 [legal-battle-2010-03-29](http://www.marketwatch.com/story/upstart-fires-back-at-oracle-in-legal-battle-2010-03-29) (“A spokeswoman for Oracle, Deborah Hellinger, said in a statement  
13 Monday that Oracle is ‘committed to customer choice and vigorous competition, but draws the line  
14 with any company, big or small, that steals its intellectual property.’ In reference to Rimini Street  
15 Chief Executive Seth Ravin, Hellinger added: ‘The massive theft that Rimini and Mr. Ravin engaged  
16 in is not healthy competition.’”); Chris Kanaracus, *Rimini Street files countersuit against Oracle*,  
17 *Bloomberg Businessweek*, Mar. 29, 2010, [http://www.businessweek.com/idg/2010-03-29/rimini-](http://www.businessweek.com/idg/2010-03-29/rimini-street-files-countersuit-against-oracle.html)  
18 [street-files-countersuit-against-oracle.html](http://www.businessweek.com/idg/2010-03-29/rimini-street-files-countersuit-against-oracle.html)).

19 46. Further, Juan C. Jones, Oracle’s Senior Vice President North America Support  
20 Services, approached a potential Rimini Street customer, National Grid, the Spring of 2010 and  
21 made derogatory statements regarding Rimini Street, stating in substance that Rimini Street’s  
22 business model was presently unsustainable and that Rimini Street would not still be in business in  
23 two years. While provably false, Mr. Jones statement regarding the sustainability of Rimini Street’s  
24 business was presented to National Grid as assertions of actual fact.

25 47. On information and belief, Oracle executives met with various executives of  
26 the CD Group, including Wayne Thrush, an Executive Director at CD Group, in the Winter of 2010.  
27 During this meeting, the Oracle executives made defamatory and false statements regarding Rimini  
28 Street, including that Oracle had information that, when disclosed, would put Rimini Street out of

1 business.

2           48. On information and belief, in approximately March of 2009, an Oracle  
3 representative contacted a senior analyst, Pat Phelan, for an influential analyst firm, Gartner  
4 Research, and made statements insinuating that Rimini Street's business practices were illegal,  
5 including its practices employed when providing maintenance and support for Oracle-branded  
6 software. Similar allegations of illegality were made to other analysts, analyst firms and members of  
7 the media, reflecting an attempt by Oracle to severely tarnish Rimini Street's standing in the  
8 industry. On information and belief, Rimini Street expects discovery will illuminate a pattern of  
9 similar defamatory communications by Oracle representatives.

10           49. Oracle's false and disparaging statements were intended to harm Rimini  
11 Street's standing in the business community and, ultimately, to hinder Rimini Street's ability to  
12 conduct and grow its business.

13           50. Oracle published its disparaging statements about Rimini Street's business  
14 maliciously, knowing such statements are false or with reckless disregard to their falsity.

15           51. Dating back to the launch of Rimini Street in 2005, Oracle and Rimini Street  
16 have had a long history of communications. Given these interactions, Oracle is well aware that  
17 Rimini Street's business practices are not illegal as Oracle has alleged and published.

18           52. And, Oracle has had no basis to believe in this stated illegality of Rimini  
19 Street's business practices. Oracle attempts to equate Rimini Street's business with that of  
20 TomorrowNow, an unrelated and different third-party support vendor owned by SAP AG, another  
21 vendor of enterprise software. Oracle filed suit against TomorrowNow and SAP AG in 2007.  
22 Although Oracle's present Complaint against Rimini Street is highly similar to Oracle's Complaint  
23 against SAP AG, et al., in Case No. 07-CV-1658 in the Northern District of California, Oracle is  
24 well aware of the significant differences between Rimini Street's practices and procedures and those  
25 of SAP's TomorrowNow. For instance, Rimini Street does not have or make available a "single  
26 repository" of downloaded Oracle Software and Support Materials as Oracle states. Nor does Rimini  
27 Street mixed or consolidated Oracle Software and Support Materials such that unique downloads for  
28 one client are co-mingled with unique downloads from other clients, and support materials are not

1 indiscriminately downloaded and stored for general use.

2           53. Oracle is further aware that Rimini Street performs a unique download of  
3 Oracle Software and Support Materials on behalf of each client that requests such service. Each  
4 client (authorizing Rimini Street to act on client's behalf) warrants to Rimini Street that it has the  
5 rights to access Oracle's support web sites and take possession of the requested Oracle Software and  
6 Support Materials. Rimini Street then maintains downloaded material only on behalf of the client for  
7 whom the download was performed. To safeguard against improper use of downloaded materials, as  
8 a matter of process and procedure, each client is assigned a separate data "silo" where Oracle  
9 Software and Support Materials for that client are maintained, and Rimini Street does not co-mingle  
10 the independent downloads of clients.

11           54. Rimini Street delivers to each client only the software and support material  
12 that each client is entitled to receive, which often are quite voluminous and can consist of thousands  
13 or even tens of thousands of materials.

14           55. Oracle is further aware that Rimini Street has consistently released its own  
15 independently-created regulatory and tax updates *before* the release date of Oracle's equivalent  
16 update, forestalling any arguments that Rimini Street copied Oracle's updates.

17           56. Finally, Oracle cannot truthfully claim that Rimini Street is not authorized to  
18 possess copies of Oracle's software. First, every Rimini Street client contract authorizes Rimini  
19 Street to possess or access copies of the client's licensed software. Second, as Oracle is well aware,  
20 it is common industry practice by other third party consulting venders such as IBM, AT&T,  
21 Accenture, Navisite, WTS, CedarCrestone, and virtually every other hosting service provider to  
22 possess and work with copies of their client's licensed software products. Third, until recently  
23 Oracle *itself* directly mailed or made available to Rimini Street through authorized downloads, as an  
24 authorized agent of Oracle's licensees, copies of the clients' licensed Oracle software. Oracle and  
25 Rimini Street personnel worked closely together over the years in the software order-to-ship process  
26 for hundreds of clients. Here again, Oracle had full knowledge that Rimini Street's actions were  
27 authorized by Oracle's customers. Far from acting as "fraudulent thieves," Rimini Street has acted  
28 legally, openly (and often with Oracle's full cooperation), and in accordance with the agreements



1 held by Rimini Street's clients.

2           57. Oracle is aware of the falsity of its statements because it was directly  
3 informed by Rimini Street of the true facts. Further, Rimini Street offered to allow Oracle to employ  
4 a neutral third party to audit Rimini Street's compliance with its processes and procedures. Instead  
5 of undertaking this reasonable confirmatory exercise, Oracle purposely and recklessly made the  
6 above-identified false and disparaging statements regarding Rimini Street.

7           58. Rimini Street has been damaged by Oracle's conduct as complained of herein,  
8 in an amount to be determined at trial. On information and belief, Oracle's false and disparaging  
9 statements regarding Rimini Street's business have directly led to economic loss on the part of  
10 Rimini Street through specific loss of sales, as well as a general decline in the growth of Rimini  
11 Street's business.

12 **COUNT TWO—DECLARATION OF UNENFORCEABILITY FOR COPYRIGHT MISUSE**

13           59. Rimini Street repeats and incorporates by reference the averments set forth in  
14 Paragraphs 1–58 as though fully set forth herein.

15           60. Oracle claims to own a valid and enforceable copyright in, or have exclusive  
16 license to, all of their software applications and software and support materials.

17           61. Oracle disseminates Oracle Software and Support Materials via electronic  
18 transmissions over a computer network. Oracle's Software and Support Materials websites contain  
19 "browser-wrap" or "click-wrap" agreements.

20           62. Oracle has admitted that its software licensees have every right to use third-  
21 party maintenance and support vendors (such as Rimini Street). However, Oracle has attempted to  
22 use the design of its support website and terms of its "browser-wrap" or "click-wrap" agreements on  
23 various Oracle web sites to forestall such legal competition from Rimini Street and to interfere with  
24 a customer's ability to select a support vendor other than Oracle. This attempt to influence  
25 competition in an area beyond the scope of Oracle's copyrights constitutes copyrights misuse.

26           63. Instead of simply providing its customers each of the support files they are  
27 entitled to possess under their respective licenses and unexpired Oracle annual support, Oracle  
28 requires customers to self-identify and individually download each such file from Oracle's support



1 material web portal. This portal contains millions of files to sort through and all are accessible to  
2 every client, regardless of which products a customer has licensed or whether or not a product is  
3 covered by an unexpired Oracle support agreement. Oracle provides no assistance to its support  
4 customers in the identification of all Oracle Software and Support Materials such customer is  
5 entitled to possess and use.

6           64. Though Oracle's support material web portal does not provide a method for  
7 customers to easily identify and download all the files they are entitled to possess and use, Oracle  
8 has changed its web site terms to prohibit the use of automated tools that can help an Oracle  
9 customer identify and download a significant volume of Oracle Software and Support Materials to  
10 which an Oracle licensee and support customer is entitled. Further, Oracle's "click-wrap" agreement  
11 has once again been changed, and now includes a provision that prohibits access to and download of  
12 support materials unless such access or download "is in furtherance of the relationship between  
13 customer and Oracle." This provision is another clear example of Oracle's systematic use of  
14 anticompetitive tactics to try and maintain a stranglehold over its customers by effectively requiring  
15 them to either continue purchasing after-market support only from Oracle or forego critical support  
16 materials to which they are entitled and for which they have already paid.

17           65. Through its various license agreements and changing web site access and use  
18 terms and conditions, Oracle is attempting to use its copyright in a manner adverse to the public  
19 policy embodied in copyright law.

20           66. The requirements Oracle places on the ability of customers (or their agents) to  
21 obtain licensed software and support materials gives Oracle a substantial and unfair advantage over  
22 its support and maintenance competitors, and these requirements constitute a misuse of copyright by  
23 Oracle.

24           67. Rimini Street has been directly harmed by Oracle's anticompetitive misuse of  
25 its copyrights and license agreements.

26           68. Rimini Street is therefore entitled to a declaratory judgment finding Oracle's  
27 copyrights to be unenforceable until that time that Oracle discontinues use of the terms that led to  
28 misuse of its copyrights.

**COUNT THREE—UNFAIR COMPETITION—CAL. BUS. & PROF. CODE § 17200**

69. Rimini Street repeats and incorporates by reference the averments set forth in Paragraphs 1–68 as though fully set forth herein.

70. Oracle has engaged in fraudulent business acts or practices by false and misleading statements, deceptive business practices, ever-changing contract terms and policies, processes, and procedures.

71. As evidence of Oracle's fraudulent business practices, on information and belief, Oracle caused false and disparaging allegations to be published and republished by Oracle and its agents to members of the media and analyst community, Rimini Street's customers and potential customers, as well as to the public at large. These allegations were made with Plaintiffs' intent to, and are likely to, deceive members of the public.

72. Oracle has also employed unlawful and/or fraudulent business practices in its dealings with industry analysts, reporters and Rimini Street's customers and potential customers. For example, Oracle has provided false and misleading information about Rimini Street to customers with which Rimini Street had established a potential business relationship.

73. The acts and conduct of Oracle constitute fraudulent conduct as defined by California Bus. & Prof. Code §§ 17200, *et seq.*

74. As a result of Oracle's actions, Rimini Street has suffered irreparable injury, and Rimini Street's standing in the business community has been harmed. Unless Oracle is enjoined, Rimini Street will continue to suffer irreparable harm and Oracle's conduct will continue to harm Rimini Street's standing in the business community, and ultimately hinder Rimini Street's ability to conduct and grow its business.

75. Oracle should be compelled to disgorge and/or restore any and all revenues, earnings, profits, compensation, and benefits they may have obtained in violation of California Business & Professions Code § 17200 *et seq.*, including, but not limited to, returning any revenue earned as a proximate result of the unlawful publication of the deceptive statements made to the public.

**RIMINI STREET'S ANSWER**

Rimini Street hereby answers Oracle USA Inc. and Oracle International Corporation's Complaint for Damages and Injunctive Relief ("Complaint") as follows:

**I. JURISDICTION**

1. Rimini Street admits that this action has been characterized by Oracle as an action arising under Federal Copyright Act, 17 U.S.C. §§ 101 *et seq.*, and the Computer Fraud and Abuse Act 18 U.S.C. §§ 1030 *et seq.* Rimini Street admits that this Court has subject matter jurisdiction over certain actions pursuant to 18 U.S.C. § 1030(g), 28 U.S.C. § 1331, and 28 U.S.C. § 1338. Rimini Street denies, however, that Plaintiffs' Complaint sets forth any meritorious cause of action from which Plaintiffs could recover its requested injunctive relief or damages.

2. Rimini Street admits that this Court has supplemental subject matter jurisdiction over pendent state law claims under 28 U.S.C. § 1367. Rimini Street denies, however, that Plaintiffs' Complaint sets forth any meritorious cause of action from which Plaintiffs could recover its requested injunctive relief or damages.

3. Rimini Street admits that this Court has original subject matter jurisdiction over state law claims under 28 U.S.C. § 1332 where the matter in controversy exceeds the sum value of \$75,000, and there is complete diversity between the Plaintiffs and Defendants. Rimini Street denies, however, that Plaintiffs' Complaint sets forth any meritorious cause of action from which Plaintiffs could recover its requested injunctive relief or damages.

**II. INTRODUCTION**

4. Rimini Street admits that Paragraph 4 contains partial quotations Plaintiffs claim are attributed to Seth Ravin, however the date, source, and context of the quotations are not identified, therefore Rimini Street denies the allegations of Paragraph 4.

5. Rimini Street admits that it provides support to companies that license certain of Plaintiffs' enterprise software applications, including Plaintiffs' PeopleSoft, J.D. Edwards ("JDE") and Siebel-branded software. Rimini Street denies the remaining allegations against it, including Plaintiffs' statements regarding Rimini Street's business, in Paragraph 5.

6. Rimini Street denies the allegations against it in Paragraph 6.

1           7. Rimini Street admits that Paragraph 7 contains partial quotations Plaintiffs  
2 claim are attributed to Seth Ravin, however the date, source, and context of the quotations are not  
3 identified, and therefore Rimini Street denies the allegations of Paragraph 7.

4           8. Rimini Street denies the allegations against it in Paragraph 8.

5           9. Rimini Street denies the allegations against it in Paragraph 9.

6           10. Rimini Street denies the allegations against it in the first two sentences of  
7 Paragraph 10. Rimini Street is without sufficient information or knowledge to form an opinion as to  
8 the veracity of the remaining allegations set forth in Paragraph 10 and therefore denies the same.

9           11. Rimini Street admits that Mr. Ravin and Mr. Nelson sold TomorrowNow to  
10 SAP and that Mr. Ravin founded Rimini Street. Rimini Street is without sufficient information or  
11 knowledge to form an opinion as to the veracity of the remaining allegations set forth in Paragraph  
12 11 and therefore denies the same.

13           12. Rimini Street admits that Paragraph 12 contains partial quotations Plaintiffs  
14 claim are attributed to Seth Ravin, however the date, source, and context of the quotations are not  
15 identified, therefore Rimini Street denies the allegations of Paragraph 12.

16           13. Rimini Street admits that Paragraph 13 contains partial quotations Plaintiffs  
17 claim are attributed to Rimini Street's marketing literature, however the date, source, and context of  
18 the quotations are not identified, therefore Rimini Street denies the allegations of Paragraph 13.  
19 Rimini Street is without sufficient information or knowledge regarding updates from PeopleSoft and  
20 TomorrowNow, Inc. to form an opinion as to the veracity of the remaining allegations set forth in  
21 Paragraph 13 and therefore denies the same.

22           14. Rimini Street denies the allegations against it in Paragraph 14.

### 23 **III. THE PARTIES**

24           15. Rimini Street is without sufficient information or knowledge to form an  
25 opinion as to the veracity of the allegations set forth in Paragraph 15 and therefore denies the same.

26           16. Rimini Street is without sufficient information or knowledge to form an  
27 opinion as to the veracity of the allegations set forth in Paragraph 16 and therefore denies the same.

28           17. Rimini Street admits that Seth Ravin is the founder, president and CEO of

1 Rimini Street, as well as a former President of Tomorrow Now. Rimini Street admits that Seth  
2 Ravin is a resident of Nevada.

3 18. Rimini Street admits that Rimini Street, Inc. is a Nevada Corporation with its  
4 principal place of business in Las Vegas, Nevada. Rimini Street admits that Seth Ravin founded  
5 Rimini Street. Rimini Street denies the remaining allegations against it in Paragraph 18.

6 19. Rimini Street is without sufficient information or knowledge to form an  
7 opinion as to the veracity of the allegations set forth in Paragraph 19 and therefore denies the same.

8 20. Rimini Street admits that Defendants are doing business in Nevada. Rimini  
9 Street further admits that it is headquartered in this district and that Mr. Ravin resides in this district.  
10 Rimini Street denies the remaining allegations against it in Paragraph 20.

11 21. Rimini Street denies the allegations against it in Paragraph 21.

12 22. Rimini Street denies the allegations against it in Paragraph 22.

#### 13 **IV. VENUE**

14 23. Rimini Street does not contest venue in this matter.

#### 15 **V. DIVISION ASSIGNMENT**

16 24. Rimini Street does not contest assignment to the Las Vegas division.

#### 17 **VI. FACTUAL ALLEGATIONS**

18 25. Rimini Street is without sufficient information or knowledge to form an  
19 opinion as to the veracity of the allegations set forth in Paragraph 25 and therefore denies the same.

20 26. Rimini Street is without sufficient information or knowledge to form an  
21 opinion as to the veracity of the allegations set forth in Paragraph 26 and therefore denies the same.

22 27. Rimini Street is without sufficient information or knowledge to form an  
23 opinion as to the veracity of the allegations set forth in Paragraph 27 and therefore denies the same.

24 28. Rimini Street is without sufficient information or knowledge to form an  
25 opinion as to the veracity of the allegations set forth in Paragraph 28 and therefore denies the same.

26 29. Rimini Street is without sufficient information or knowledge to form an  
27 opinion as to the veracity of the allegations set forth in Paragraph 29 and therefore denies the same.

28 30. Rimini Street is without sufficient information or knowledge to form an

1 opinion as to the veracity of the allegations set forth in Paragraph 30 and therefore denies the same.

2 31. Rimini Street is without sufficient information or knowledge to form an  
3 opinion as to the veracity of the allegations set forth in Paragraph 31 and therefore denies the same.

4 32. Rimini Street is without sufficient information or knowledge to form an  
5 opinion as to the veracity of the allegations set forth in Paragraph 32 and therefore denies the same.

6 33. Rimini Street admits revenue may be derived from the three activities  
7 identified by Paragraph 33.

8 34. Rimini Street admits the allegations of Paragraph 34.

9 35. Rimini Street admits that it competes with Oracle by "providing low-cost  
10 maintenance and support services to PeopleSoft, JDE and Siebel customers running assorted  
11 versions of these software programs," that it "can cut customer maintenance and support bills in half  
12 and give customers a reprieve from software upgrade cycles," that "customers can remain on older  
13 versions of PeopleSoft, JDE or Siebel software rather than moving to later versions," and that  
14 "Rimini Street can provide fixes and updates and support older software for 10 years past its general  
15 availability." Rimini Street denies the remaining allegations against it in Paragraph 35.

16 36. Rimini Street admits to offering "customization fixes," "tax and regulatory  
17 updates, applications and repository fixes," and "24/7 Support with Guaranteed 30 Minutes or less  
18 Response." Rimini Street admits to offering comprehensive support at "More Than 50% Annual  
19 Savings." Rimini Street denies the remaining allegations against it in Paragraph 36.

20 37. Rimini Street denies the allegations against it in Paragraph 37.

21 38. Rimini Street denies the allegations against it in Paragraph 38.

22 39. Rimini Street is without sufficient information or knowledge to form an  
23 opinion as to the veracity of the allegations set forth in Paragraph 39 and therefore denies the same.

24 40. Rimini Street is without sufficient information or knowledge to form an  
25 opinion as to the veracity of the remaining allegations set forth in Paragraph 40 and therefore denies  
26 the same.

27 41. Rimini Street is without sufficient information or knowledge to form an  
28 opinion as to the veracity of the allegations set forth in Paragraph 41 and therefore denies the same.

1           42. Rimini Street denies the allegations against it in the first sentence of  
2 Paragraph 42. Rimini Street is without sufficient information or knowledge to form an opinion as to  
3 the veracity of the remaining allegations set forth in Paragraph 42 and therefore denies the same.

4           43. Rimini Street denies the allegations against it in the first, third and fourth  
5 sentences of Paragraph 43. Rimini Street is without sufficient information or knowledge to form an  
6 opinion as to the veracity of the remaining allegations set forth in Paragraph 43 and therefore denies  
7 the same.

8           44. Rimini Street denies the allegations against it in Paragraph 44.

9           45. Rimini Street denies the allegations against it in Paragraph 45.

10          46. Rimini Street admits it downloaded, on behalf and as an agent of its  
11 customers, materials from Oracle's Technical Support websites. Rimini Street denies the remaining  
12 allegations against it in Paragraph 46.

13          47. Rimini Street denies that it has engaged in large-scale downloading that has  
14 damaged Plaintiffs' servers. Rimini Street also denies that it "admitted that it has engaged in large-  
15 scale downloading that has damaged Oracle's servers." Rimini Street is without sufficient  
16 information or knowledge to form an opinion as to the veracity of the remaining allegations set forth  
17 in Paragraph 47 and therefore denies the same.

18          48. Rimini Street admits that Paragraph 48 contains partial quotations Plaintiffs  
19 claim are attributed to Rimini Street's lawyers, however the date, source, and context of the  
20 quotations are not identified, therefore Rimini Street denies the allegations of Paragraph 48. Rimini  
21 Street denies the remaining allegations against it in Paragraph 48.

22          49. Rimini Street admits that Paragraph 49 contains partial quotations Plaintiffs  
23 claim are attributed to Mr. Ravin, however the date, source, and context of the quotations are not  
24 identified, therefore Rimini Street denies the allegations of Paragraph 49. Rimini Street denies the  
25 remaining allegations against it in Paragraph 49.

26          50. Rimini Street is without sufficient information or knowledge to form an  
27 opinion as to the veracity of the allegations set forth in Paragraph 50 and therefore denies the same.

28          51. Rimini Street admits the allegations of Paragraph 51.

52. Rimini Street is without sufficient information or knowledge to form an opinion as to the veracity of the allegations set forth in Paragraph 52 and therefore denies the same.

53. Rimini Street denies the allegations against it in Paragraph 53.

54. Rimini Street admits Mr. Ravin signed contracts on behalf of Rimini Street. Rimini Street denies the remaining allegations against it in Paragraph 54.

55. Rimini Street denies the allegations against it in the first sentence of Paragraph 55. Rimini Street is without sufficient information or knowledge to form an opinion as to the veracity of the remaining allegations set forth in Paragraph 55 and therefore denies the same.

56. Rimini Street admits the allegations of Paragraph 56.

57. Rimini Street denies the allegations against it in Paragraph 57.

58. Rimini Street admits that, of its ten-member management team, seven list prior employment experience with PeopleSoft, Siebel, or Oracle. Rimini Street denies the remaining allegations against it in Paragraph 58.

59. Rimini Street denies the allegations against it in Paragraph 59.

60. Rimini Street denies the allegations against it in Paragraph 60.

61. Rimini Street admits that Plaintiffs claim numerous works that are protected under the Federal Copyright Act, 17 U.S.C. §§ 101 *et seq.* Rimini Street denies the remaining allegations against it in Paragraph 61.

62. Rimini Street denies the allegations against it in Paragraph 62.

63. Rimini Street denies the allegations against it in Paragraph 63.

64. Rimini Street denies the allegations against it in Paragraph 64.

65. Rimini Street denies the allegations against it in Paragraph 65.

66. Rimini Street denies the allegations against it in Paragraph 66.

67. Rimini Street denies the allegations against it in Paragraph 67.

68. Rimini Street denies the allegations against it in Paragraph 68.

69. Rimini Street denies the allegations against it in Paragraph 69.

### **Oracle's First Claim for Relief**

#### **Copyright Infringement**



1           70. Rimini Street repeats, realleges, and incorporates by reference its responses to  
2 the preceding paragraphs as though fully set forth herein.

3           71. Rimini Street is without sufficient information or knowledge to form an  
4 opinion as to the veracity of the allegations set forth in Paragraph 71 and therefore denies the same.

5           72. Rimini Street is without sufficient information or knowledge to form an  
6 opinion as to the veracity of the allegations set forth in Paragraph 72 and therefore denies the same.

7           73. Rimini Street is without sufficient information or knowledge to form an  
8 opinion as to the veracity of the allegations set forth in Paragraph 73 and therefore denies the same.

9           74. Rimini Street denies having infringed copyrights in Plaintiffs' software and  
10 support material. Rimini Street is without sufficient information or knowledge to form an opinion as  
11 to the veracity of the remaining allegations set forth in Paragraph 74 and therefore denies the same.

12           75. Rimini Street denies the allegations against it in Paragraph 75.

13           76. Rimini Street denies the allegations against it in Paragraph 76.

14           77. Rimini Street denies the allegations against it in Paragraph 77.

15           78. Rimini Street denies the allegations against it in Paragraph 78.

16           79. Rimini Street denies the allegations against it in Paragraph 79.

17           80. Rimini Street denies the allegations against it in Paragraph 80.

18           81. Rimini Street denies the allegations against it in Paragraph 81.

19           82. Rimini Street denies the allegations against it in Paragraph 82.

#### 20           **Oracle's Second Through Fourth Claims for Relief**

21           As set forth in Rimini Street's Motion to Dismiss, Oracle's Second through Fourth  
22 Claims for Relief fail to state a claim against Rimini Street and should be dismissed. Rimini Street  
23 reserves the right to respond further to Oracle's Second through Fourth Claims for Relief once the  
24 issues raised in Rimini Street's Motion to Dismiss are resolved, to the extent any claims remain.

#### 25           **Oracle's Fifth Claim for Relief**

##### 26           **Breach of Contract**

27           110. Rimini Street repeats, realleges, and incorporates by reference its responses to  
28 the preceding paragraphs as though fully set forth herein.

111. Rimini Street is without sufficient information or knowledge to form an opinion as to the veracity of the allegations set forth in Paragraph 111 and therefore denies the same.

112. Rimini Street is without sufficient information or knowledge to form an opinion as to the veracity of the allegations set forth in Paragraph 112 and therefore denies the same.

113. Rimini Street denies the allegations against it in Paragraph 113.

114. Rimini Street denies the allegations against it in Paragraph 114.

### **Oracle's Sixth Through Thirteenth Claims for Relief**

As set forth in Rimini Street's Motion to Dismiss, Oracle's Sixth through Thirteenth Claims for Relief have not been adequately plead, and these claims should be dismissed. Given Oracle's failure to properly plead its Sixth through Thirteenth Claims for Relief, Rimini Street cannot answer Oracle's allegations at this time. Rimini Street reserves the right to respond further to Oracle's Sixth through Thirteenth Claims for Relief once the issues raised in Rimini Street's Motion to Dismiss are resolved, to the extent any claims remain.

### **Prayer for Relief**

Rimini Street denies that Plaintiffs are entitled to any relief in connection with the allegations of Plaintiffs' Complaint, including, without limitations, the allegations of Paragraphs A. through N of Plaintiffs' Prayer for Relief.

To the extent that any allegation contained in Plaintiffs' Complaint has not been specifically admitted herein, it is hereby denied. Rimini Street further denies any allegations that may be implied by or inferred from the headings of Plaintiffs' Complaint.

### **Affirmative Defenses**

#### **First Affirmative Defense**

1. One or more of the copyrights that are allegedly infringed by Rimini Street are invalid for failure to comply with the requirements for copyrightable subject matter set forth in 17 U.S.C. § 102, including that no copyright protection is afforded to "any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied."

#### **Second Affirmative Defense**

1           2. Rimini Street's use of Plaintiffs' copyrighted material, if any, is authorized  
2 under terms of license agreements held by Rimini Street and/or Rimini Street's licensed customers  
3 for whom Rimini Street acts as an agent.

4                           **Third Affirmative Defense**

5           3. Plaintiffs consented to Rimini Street's use, if any, of Plaintiffs' copyrighted  
6 material. Oracle consented to Rimini Street's use of its copyrighted material by issuing Rimini  
7 Street, as a designated "Oracle Technical Support Contact," log-on credentials that enable access to  
8 support materials through Oracle's customer support web pages, and by providing copyrighted  
9 material directly to Rimini Street on numerous occasions, as an authorized agent of Oracle's  
10 licensees

11                           **Fourth Affirmative Defense**

12           4. Plaintiffs' claims for copyright infringement are barred by the doctrine of  
13 copyright misuse. As explained by Rimini Street's Second Counterclaims, Oracle has attempted to  
14 use the design of its support website and terms of its license agreements and its "browser-wrap" or  
15 "click-wrap" agreements to forestall competition and to significantly interfere with and/or to  
16 preclude a customer's ability to select a support vendor other than Oracle. This attempt to influence  
17 competition in an area beyond the scope of Oracle's copyrights constitutes copyrights misuse.

18                           **Fifth Affirmative Defense**

19           5. One or more of Plaintiffs' claims for statutory damages and attorneys' fees  
20 under 17 U.S.C. § 504 are barred because some, if not all, of Plaintiffs' copyright registrations were  
21 not made within three months after the first publication of the allegedly infringing works, as required  
22 by 17 U.S.C. § 412.

23                           **Sixth Affirmative Defense**

24           6. Plaintiffs' claims for copyright infringement are barred by implied license.  
25 Oracle's conduct, as well as the custom and practice of the community, gives rise to an implied  
26 license. For example, Oracle granted Rimini Street access to the support materials, and Oracle itself  
27 directly mailed Rimini Street copies of the software, as an authorized agent of Oracle's licensees.  
28

1 These exemplary actions in conjunction with the well-known and accepted practices of the software  
2 industry provide Rimini Street an implied license to access and use Oracle's copyrighted content.

3 **Seventh Affirmative Defense**

4 7. Plaintiffs' claims for copyright infringement are barred by the doctrines of  
5 merger and Scènes-à-faire. Given the limited number of ways that updates, fixes and other alleged  
6 derivative works can be expressed, Plaintiffs' claims for copyright infringement are barred for one  
7 or more works and/or derivative works allegedly infringed by Rimini Street.

8 **Eighth Affirmative Defense**

9 8. Plaintiffs' claims are barred in whole or in part by the applicable statutes of  
10 limitations. One or more of the alleged acts of infringement occurred prior to the Copyright Act's  
11 three year statute of limitations.

12 **Ninth Affirmative Defense**

13 9. Plaintiffs' claims for copyright infringement are barred by the doctrines of  
14 laches, waiver and estoppel. Since the inception of Rimini Street in September 2005, Plaintiffs and  
15 their predecessors have made allegations and threats against Rimini Street with regard to Rimini  
16 Street's provision of after-market support services for Oracle products in numerous direct  
17 correspondence to Rimini Street, in media interviews, in industry analyst discussions, and in  
18 discussions with prospective Rimini Street clients. Oracle even threatened litigation in some  
19 correspondence with Rimini Street and in its discussions with prospective Rimini Street clients. As  
20 set forth, *supra*, in the Factual Background and with respect to Rimini Street's Counterclaim for  
21 business disparagement and trade libel, Plaintiffs have been made well-aware of the business  
22 practices and procedures employed by Rimini Street. Plaintiffs are also well-aware of the  
23 longstanding and accepted industry practices and norms of other third party consulting vendors.

24 **Tenth Affirmative Defense**

25 10. Any reproduction, display, derivation, publication or distribution of any valid  
26 copyright of the Plaintiffs by Rimini Street is a fair use protected by the provisions of 17 U.S.C. §  
27 107.

28 **Eleventh Affirmative Defense**

11. Any copy, adaptation, lease, sale, or transfer of any work copyrighted by the Plaintiffs is protected by the provisions of 17 U.S.C. § 117.

Rimini Street reserves the right to assert additional defenses as they become known through further investigation and discovery. In addition, Rimini Street reserves the right to assert additional affirmative defenses to the claims inadequately alleged in Oracle's second through fourth and sixth through thirteenth claims for relief to the extent necessary after resolution of Rimini Street's motion to dismiss.

WHEREFORE, Rimini Street request that Plaintiffs' Complaint be dismissed in its entirety, with prejudice; that judgment be entered against Plaintiffs in connection with its Complaint; that judgment be entered in favor of Rimini Street; that the Court declare this case to be exceptional; that Rimini Street be awarded its costs and reasonable attorneys' fees incurred in connection with the defense of this action; and that Rimini Street be awarded such other and further relief as the Court deems appropriate.

#### **Demand for Jury Trial**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Rimini Street hereby demands a jury trial on all issues so triable.

DATED: May 24, 2010

GREENBERG TRAURIG

By: 

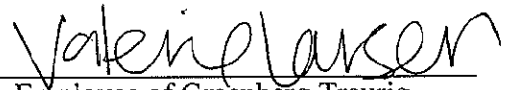
Mark G. Tratos, Esq. (Nevada Bar No. 1086)  
 Brandon Roos, Esq. (Nevada Bar No. 7888)  
 Leslie Godfrey, Esq. (Nevada Bar No. 10229)  
 3773 Howard Hughes Parkway  
 Suite 400 North  
 Las Vegas, NV 89169

*Attorney for Defendants  
 Rimini Street, Inc. and Seth Ravin*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 24th day of May, 2010, I electronically filed the foregoing document with the clerk of the court for the U.S. District Court, District of Nevada, using the electronic case filing system. The electronic case filing system sent a "Notice of Electronic Filing" to the attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means.

By: \_\_\_\_\_

  
An Employee of Greenberg Traurig